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VIA CM/ECF

The Honorable Leonard P. Stark
United States District Court
for the District of Delaware
844 N. King Street
Wilmington, DE 19801

Re: *Align Technology, Inc. v. 3Shape A/S, 3Shape TRIOS A/S, and 3Shape, Inc.*,
C.A. No. 17-1646-LPS

Dear Chief Judge Stark:

Plaintiff Align Technology, Inc. (“Align”) and Defendants 3Shape A/S, 3Shape TRIOS A/S, and 3Shape, Inc. (“3Shape”) submit this letter regarding the upcoming trial set to begin on July 26, 2021.

3Shape’s Position

3Shape respectfully requests that the Court postpone trial in this action due to unique circumstances related to the Covid-19 pandemic.

3Shape is based in Denmark, where all of its anticipated trial witnesses are located. On January 25, 2021, President Biden issued a “Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease” that prohibits travel from the “Schengen Area” of Europe, which includes Denmark, in order to curb the spread of

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Covid-19.¹ Although this Proclamation is subject to certain exceptions for U.S. citizens and certain non-citizens, none of those exceptions apply here.²

Under these restrictions, no 3Shape witnesses or representatives will be able to travel from Denmark to the U.S. for trial in this action, which is currently scheduled to begin on July 26, 2021. (See D.I. 517, 521.) While 3Shape appreciates that the courtroom's technology allows remote testimony, 3Shape's inability to provide any in-person corporate representatives or fact witnesses, particularly if Align's fact witnesses based in the U.S. are able to testify in person, would be highly prejudicial.

3Shape therefore respectfully requests the Court reschedule trial in this matter for November 8, 2021, subject to the Court's availability, to allow for these travel restrictions to be loosened and to accommodate trial conflicts of lead counsel for both Align and 3Shape. While 3Shape had originally proposed to Align postponing trial by approximately 60 days such that trial would occur in late August or early September, Align countered by proposing to postpone trial to October 25, 2021 because Align's lead counsel has a trial in the Central District of California scheduled to begin on September 21, 2021.

Because 3Shape, including lead counsel and multiple overlapping attorneys and witnesses, currently has a trial in the Western District of Texas scheduled to begin on October 12, 2021, Align's counter proposal does not adequately accommodate 3Shape's request. Specifically, it is unlikely that 3Shape's witnesses and counsel would be able to appear at scheduled pre-trial conferences or adequately prepare for an October 25 trial in light of its trial scheduled in the Western District of Texas. Align's reluctance to schedule trial in late August or early September based on its counsel's prior commitments is inconsistent with its suggestion that scheduling 3Shape and its counsel for back to back trials is not problematic. 3Shape therefore respectfully requests that the trial in this action be rescheduled for November 8, 2021 or an alternative time period during November, subject to the Court's availability.

¹ See, e.g., White House, Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease, *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/proclamation-on-the-suspension-of-entry-as-immigrants-and-non-immigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease/>.

² See, e.g., State Department, Updates to National Interest Exceptions for Regional COVID Proclamations (April 26, 2021), *available at* <https://travel.state.gov/content/travel/en/News/visas-news/updates-to-national-interest-exceptions-for-regional-covid-proclamations.html>.

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Align's Position

Align does not oppose 3Shape's request.

Align prefers for the Court to reschedule trial in this matter to October 25, 2021. It appears that the Court does not have any other trials scheduled during that week, which would increase the chances of the parties getting to proceed to trial. In addition, 3Shape has requested that the Court not reschedule trial in this matter in early or mid-October due to a trial setting in another case in the Western District of Texas on October 12, 2021. Setting this trial for October 25 accommodates that request.

Align could also be available for trial on November 8, 2021, if the Court prefers, although Align understands there are already two other cases set for trial on that date.

Respectfully submitted,

/s/ James H.S. Levine
James H.S. Levine (#5355)

*Counsel for Defendants 3Shape
A/S, 3Shape TRIOS A/S, and
3Shape, Inc.*

Cc: All counsel of record (by CM/ECF)